

TESTIMONY
OF
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PROGRAMS
IMMIGRATION AND NATURALIZATION SERVICE

REGARDING

THE INSTITUTIONAL HEARING PROGRAM
BEFORE
THE

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
HOUSE JUDICIARY COMMITTEE

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Introduction

On behalf of the Immigration and Naturalization Service (INS), I am pleased to have this opportunity to testify on the Institutional Hearing Program (IHP); a program which facilitates the removal of criminal aliens from the United States. The growing number of criminal aliens is of grave concern to the American public. This Administration has made the identification and removal of criminal aliens a high priority and is moving on several fronts to accomplish this priority. We have negotiated with state governments to work effectively and efficiently in state correctional facilities. We have revised the manner by which we assign and use our investigative personnel. We have asked and received from Congress additional personnel and resources to expand the IHP. We have instituted a national detention and removal plan to expedite the removal of criminal and other deportable aliens.

The IHP is a cooperative effort among the INS, the Executive Office for Immigration Review (EOIR), and federal and state correctional agencies to process convicted criminal aliens for removal while they are serving their prison sentences. First established under the Immigration Reform and Control Act of 1986, the goal of the IHP is to complete the administrative determination of deportability prior to completion of the alien's sentence, enabling more effective use of INS detention space and significantly reducing the threat to public safety by effecting immediate deportation upon completion of the sentence.

For many years, the Institutional Hearing Program operated on an ad hoc basis. INS worked informally with corrections agencies and EOIR to set up periodic hearings in institutions with large criminal alien populations. Congress recognized the efficiency of this procedure, and included a provision in the Immigration Reform and Control Act of 1986 requiring that deportation proceedings for deportable criminal aliens begin as soon as possible after their conviction. The Anti-Drug Abuse Act of 1988 defined certain crimes as "aggravated felonies", and required that the "Attorney General provide for the initiation and to the extent possible, the completion of deportation proceedings" for any alien convicted of an aggravated felony. INS instituted programs within current resources to implement these Congressional mandates. We soon recognized, however, that the IHP process is labor intensive, and that the sheer number of criminal aliens in state and federal prisons required additional resources. In 1993, INS began to develop cost estimates of the resources that would be needed for fully effective IHP programs, and those estimates were included in the President's FY 1995 Budget.

Congress also recognized that for the IHP to be truly effective, INS needed the full cooperation of participating states. Thus, a provision was included in the Immigration Act of 1990 which required states to establish a plan to provide INS with notice of conviction of aliens who violated state criminal laws. Further, the Violent Crime Control and Law Enforcement Act of 1994 authorized reimbursement to State and local governments for the costs associated with incarceration of undocumented criminal aliens, and funds were made available in appropriations for this purpose.

In short, Congress recognized that both the Federal Government and the states have roles to play in the IHP process, and resources were made available to ensure an active partnership between both players. In March 1995, INS testified before the Immigration and Claims Subcommittee on the identification and removal of criminal aliens. An important element of that testimony was the Service's efforts at that time to implement enhanced IHPs in states with large numbers of criminal aliens in their prison populations. At that time INS had just begun to recruit, hire, and train new investigative personnel that had been approved in the FY1995 budget. The funds were used to hire personnel to enhance the IHP in the five states identified in 1990 as having the highest populations of incarcerated foreign-born nationals: California, Texas, New York, Florida, and Illinois.

I am happy to report today that we have made significant progress in the IHP since March of 1995. The personnel resources provided by Congress in fiscal years 1995 and 1996 have been hired, trained, and deployed. With these resources, we have implemented enhanced IHPs in the States of California, Texas, New York, Florida, Illinois, Arizona, New Jersey, and New Mexico. In the Federal IHP we have reached agreement on 15 sites where newly-sentenced foreign-born inmates will be processed by INS staff and where hearings will be conducted by EOIR.

In FY 1996, INS removed 36,933 criminal aliens, 10,323 of whom had completed the IHP process. IHP removals for the first two quarters of FY 1997 showed a 37% increase over the same period last year. IHP-related workload measures also saw substantial increases: the number of interviews rose by 25%; the number of charging documents prepared was up 26%; and filings with EOIR increased by 61%. The IHP removal numbers show steady improvement with removals gradually increasing from an estimated 5,000 in FY 1993 to 9,557 in FY 1995 and 10,323 in FY 1996. At the same time that removals have increased, the infrastructure for further increases in the removal rate in coming years has been established at both the state and federal level. In FY 96, funds were appropriated to enhance the program in Arizona, New Jersey, and the Federal BOP. Additionally, funding was provided to handle the actual removal of criminal aliens from state and Federal IHPs upon sentence completion.

While the FY 1995 funding increases were focused mainly on identification and processing of inmates at intake, FY 1996 resources are geared towards the removal aspect of the IHP. We also now have at our disposal new tools made available in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) such as administrative removal and reinstatement of prior deportation orders. Although staff, funding and statutes are now in place, potential IHP achievements are not boundless. A critical aspect of our ability to maximize the number of aliens processed while serving time is the cooperation of the state to consolidate the foreign-born population for purposes of identification, hearings, and release. Without that cooperation, even the resource enhancements will be inadequate to reach our goal.

As of April 1, 1997, approximately 78,200 foreign-born nationals were incarcerated in state correctional facilities. Of these, over 80 percent are incarcerated in seven states: California, Texas, New York, Florida, New Jersey, Arizona, and Illinois.

INS estimates that 80 percent or 62,560 of the foreign-born inmates in state institutions are subject to deportation. The remaining twenty percent have naturalized or acquired citizenship through their United States citizen parent(s), or their convictions are for crimes that do not subject them to deportation.

As of May 1997, there were 24,470 sentenced non-citizen inmates in Federal institutions, or 23.9 % of the BOP's population. Although the foreign-born population is much higher (more than 34,000 as of April 30, 1997) this is not a true indicator of IHP workload since it includes, for example, unsentenced U.S. Marshals prisoners and INS Cuban detainees not subject to removal.

Hearings are currently being conducted in 61 state correctional facilities, 11 Bureau of Prisons facilities, and 4 county jails.

Based on a January 1997 Bureau of Justice Statistics Bulletin, at midyear 1996, some 591,400 offenders were being held in local jails. The INS estimates that 8 percent (47,300) of that population is foreign-born.

Because their sentences are so short, it is difficult to complete hearings before release for the jail population in a true "IHP." Nonetheless, INS is currently identifying and processing for removal aliens incarcerated in 18 local jails.

Accomplishments in the IHP

The INS and EOIR have been working with the Federal Bureau of Prisons and the corrections authorities in the States of California, Texas, New York, Florida, New Jersey, Arizona, Illinois, Pennsylvania and New Mexico to enhance the capacity of the IHP to identify and process deportable criminal aliens. Now I would like to give you examples of several enhanced IHPs where our increased efforts have resulted in real gains in productivity.

New York

New York was the first state in which we enhanced the capacity of IHP. On April 4, 1994, INS, EOIR, and the New York State Department of Corrections (NYDOCS), reduced the number of hearing sites from 7 to 3; established those three sites as exclusive sites for intake and release; INS and EOIR committed permanent staff to two of the intake sites; and modified the hearing schedule to provide for daily hearings at the three sites.

Of the IHP resources provided in FY 1995 and 1996, 31 positions were deployed to the New York state system. Since the addition of the resource enhancements our productivity has improved dramatically. For the first six months of FY 1997 approximately 1,600 potentially removable criminal aliens were released to INS custody: of those 35 percent (587) completed the IHP process.

California

On December 19, 1994, INS approved the California State Enhanced IHP Plan. The plan identified 11 intake/reception sites, and 3 hearing/release sites.

California has the largest population of foreign-born criminal aliens serving sentences in its prison system, more than 29,000. In response, INS has devoted a significant number of staff to the program. During the first six months of FY 1997, INS agents interviewed more than 10,000 foreign-born nationals in the California IHP, and prepared charging documents on about 8,500 (not all foreign-born inmates interviewed are deportable). Unlike most of the other IHPs, cases in California are heard 30-40 days prior to their release from prison. Of the 6,200 inmates released to INS custody during the first six months of this fiscal year, approximately 2,500 (40%) had completed the IHP. In FY 1996, 11,777 criminal aliens were released to INS custody by the California Department of Corrections after completion of their state sentence. Of the 11,777 criminal aliens released to INS custody, 40 percent (4,704) had completed the IHP process. We recognize the need for improvements in some areas and we are working within INS and with the State to further improve the process.

Texas

On March 21, 1995, INS approved the Texas State Enhanced IHP Plan. The close working relationship that INS developed with the Texas Criminal Justice System (TDCJ) is illustrated by TDCJ's commitment to build a multi-million dollar facility at Huntsville which is leased by INS for inmate processing and hearings. Multiple intake, hearing, and release sites for foreign-born inmates in the State of Texas were consolidated into this single site. Permanent INS and EOIR staff are assigned to this facility. An Immigration Judge conducts hearings on a daily basis. This ensures that foreign-born inmates are interviewed at intake, and/or release, and placed in removal proceedings, if applicable.

The effectiveness of the single intake and release site in aiding the identification and processing of criminal aliens is reflected in the dramatic increase in funds awarded to Texas under the State Criminal Alien Assistance Program (SCAAP). SCAAP is a federal program that reimburses states for the incarceration of undocumented criminal aliens [INA Section 241(I)]. Prior to opening the single intake and release site, the State of Texas received \$16 million in SCAAP funds. One year after the single intake and release site concept was initiated, the State of Texas, with INS assistance, was able to identify significantly more aliens in their population resulting in an award of \$51.9 million in SCAAP funds in FY 1996.

In FY 1996, INS agents interviewed 2,861 foreign-born inmates of which 2,020 were identified by INS as aliens amenable to removal proceedings. INS agents also prepared 1,923 charging documents (a 352 percent increase over FY 1995) and 1,274 were filed with EOIR (an 81 percent increase over FY 1995). EOIR issued 585 removal orders (a 38 percent increase over FY 1995). Approximately 1,500 potentially removable criminal aliens were released to INS custody, of whom 46 percent (684) had completed the IHP process (a 288 percent increase over FY 1995). Those who did not complete the IHP process were transferred to INS detention facilities so removal proceedings could commence or continue.

During the first six months of FY 1997, INS agents interviewed 2,923 foreign-born inmates (an 83 percent increase over the same period in FY 1996) of whom 2,372 were identified by INS as aliens amenable to removal proceedings. In addition, INS agents prepared 1,069 charging documents (a 170 percent increase over the same period in FY 1996) and 2,061 were filed with EOIR (a 485 percent increase over the same period in FY 1996). EOIR issued 968 removal orders (a 319 percent increase over the same period FY 96). Approximately 900 potentially removable criminal aliens were released to INS custody during the first 6 months of FY 1997, of whom 56 percent (505) had completed the IHP process (a 150 percent increase over the same period in FY 1996), the remaining criminal aliens who did not complete the IHP process were transferred to INS detention facilities so removal proceedings could commence or continue.

Federal

In FY 95 and FY 96, INS was provided resources for enhancement of the Federal IHP. Last year, INS, the BOP, and EOIR concluded a formal agreement which lays out a comprehensive and nationwide plan to identify, process and conduct hearings on deportable inmates in federal custody. INS and BOP have agreed on 15 sites where newly sentenced non-United States citizen inmates will be interviewed by INS staff. These 15 sites will also serve as hearing sites for EOIR. We have made use of video conferencing equipment at the more remote sites to reduce travel associated with the hearings, and to address security and efficiency concerns. INS and BOP have agreed that 22 of more than 90 institutions will serve as release sites for the removal population.

Implementation of the Federal IHP enhancements are ongoing. In developing the Federal IHP enhancement plan, INS, BOP, and EOIR recognized that full implementation would require several years because of the complexity of the initiative, and the number of INS districts, EOIR courts and BOP institutions involved. The 1996 agreement between the three agencies stated that implementation would proceed on a site-by-site basis, and would take 2-3 years. We are now well into Phase II of the two-phased plan.

In FY 1996, approximately 11,650 non-United States citizen inmates were released by BOP after completion of their Federal sentence. Of those, 2,652 received orders of removal through the IHP. For the first six months of FY 1997, just over 2,000 criminal aliens who had received orders through the Federal IHP had been removed (a 67 percent increase over the same period in FY 1996). Those that did not complete the IHP process were transferred to INS detention facilities so removal proceedings could commence or continue.

Implementation of Administrative Removal

The Violent Crime Control and Law Enforcement Act of 1994 authorized specially designated INS officers to order the deportation of criminal aliens in lieu of a hearing before an immigration judge. These provisions only apply in the cases of aliens who are convicted of aggravated felonies, are not lawful permanent resident aliens, and are not eligible for any relief from deportation under the Immigration and Nationality Act (INA). This program streamlines the deportation process for aggravated felons who are not eligible to apply for relief from deportation. In FY 1996, 500 aggravated felons received Final Administrative Orders of Deportation and were removed from the United States. Use of this provision has increased with implementation of IIRIRA, which expanded the definition of aggravated felon. During the first 7 months of FY 97, 1,268 aggravated felons were issued or received Final Administrative Orders of Deportation/Removal and were removed from the United States.

An innovation that developed as an adjunct to the federal IHP, which has now been codified under IIRIRA, is the Stipulated Removal Program for Criminal Reentry Violations. This program was first developed in the Southern Judicial District of California in San Diego. This stipulated removal program allows for the

removal of aliens who are being charged by the U.S. Attorney with felony criminal violations of reentry or attempted reentry after deportation. Smaller programs are currently being implemented in San Antonio, Texas; New York, New York; El Paso, Texas; and Arlington, Virginia. As part of a plea agreement, the alien pleads guilty to the criminal charge and stipulates to deportability in writing before an immigration judge, a U.S. Magistrate, or a U.S. District Court Judge. The alien subsequently reappears before the U.S. District Court Judge for sentencing on his criminal conviction. In FY 1996, 607 stipulated orders were issued in San Diego.

Reinstatement of Prior Deportation/Exclusion Orders

Another provision authorized under IIRIRA is reinstatement of a prior deportation order in order to expedite the removal process. When an alien is determined to have illegally reentered the United States after having been removed or having departed voluntarily under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed. The alien may be removed at any time after his/her reentry. For the month of April 1997, the first month of data after this provision was implemented, 233 aliens with reinstated orders were removed.

GAO Statement of Results

Finally, I would like to comment briefly on the preliminary results of GAO's analysis of the IHP. In their study, GAO reviewed INS activities and analyzed data on the application of the IHP to 17,320 foreign-born persons who were released from the Federal BOP and prisons in five states during the last six months of FY1995. Of that population, 11,436 released inmates were identified by reviewing INS and EOIR data as being potentially deportable. Forty-three percent of the 11,436 had completed the IHP process before being released.

GAO did not include the fact that the vast majority (approximately 87 %) of the others had begun the IHP process before release.

The GAO also analyzed INS' nationwide data for FY 1995, finding that 18,106 alien inmates released from prison without a final removal order during that year were detained by INS at an estimated cost of \$56,490,000 more than would have been the case had the order been issued before their release. GAO characterizes the \$56 million as "avoidable detention cost."

The INS agrees that a goal of the IHP is to reduce the average length of stay in INS detention by completing the processing for removal prior to the alien's release from corrective custody. However, since we are able to use any detention spaces we have available, GAO's projected "avoidable detention costs" do not represent actual fiscal savings. Moreover, GAO's analysis does not support attributing these detention costs to a failure of the IHP. In fact, IHP proceedings had commenced for 87 % (15,752) of the release population. There is no analysis of the reasons why the process was not completed before release. There was also no analysis of the reasons for the length of stay in INS detention; e.g. delay in obtaining travel documents, circumstances for obtaining counsel or to prepare application for relief; many of which may have been beyond the control of INS.

The GAO reviewed programs in the five states with the highest foreign-born populations: California, Texas, New York, Florida, and Arizona. However, the resource enhancement for Arizona was not received until late FY 1996 and the consolidated intake and release site in Huntsville, Texas opened in October 1996--after the GAO study period.

Finally, from an analysis of data, GAO concluded that as many as 1,899 potentially deportable criminal aliens released from these jurisdictions may not have been placed into proceedings and removed by INS. In this regard, it is important to note that we have deployed the IHP resources at the intake centers within the five states in order to ensure that we are identifying and processing foreign-born criminals as they enter corrective custody. Given that we are deploying those resources to intake sites during FY 1995 and 1996, we did not expect a dramatic increase in the percentage of prisoners released during those fiscal years who have completed the IHP process. Many of those people who were released during that time had come into the state justice system years before INS had staffed the intake centers.

We consider GAO's data to be baseline data against which future comparisons can be made to measure improvement in the IHP. We think that the data confirms the appropriateness of deploying our resources at the state and Federal prison locations even while noting some areas that need continued improvement.

Conclusion INS has tried to improve the Institutional Hearing Program by creating new categories within our national database repository, the Deportable Alien Control System (DACs), to improve data collection and reporting capabilities. In FY96 alone, in excess of \$1.3 million was expended to supply our IHP offices with computer hardware and software technologies to improve productivity and access to centralized records.

In May of 1997, we completed a comprehensive workflow analysis of a mid-size IHP operation at Phoenix, Arizona, to determine methods and procedures that could be utilized nationally to improve IHP performance. Based on this analysis, the Phoenix workflow was streamlined, and because of this, productivity has significantly increased. This analysis will enable INS to develop staffing models to properly deploy resources based upon workload projections for future years.

Additional actions that INS is considering as ways to improve the Institutional Hearing Program are as follows:

Developing improved methods to identify potentially deportable criminal aliens.

Considering the performance of a follow-up study, the results of which can be compared to the baseline information contained in the GAO's Statement of Results.

Improving management information systems for capturing and reporting data on the IHP.

We are currently looking at all of our major occupations with career ladders of GS-9 regarding advancement opportunities and career paths.

Increasing cooperation between the States and INS in implementing all aspects of the IHP, including the identification of potentially deportable criminal aliens.

Improving communication about the IHP to INS Regional and District Offices.

The Justice Department strongly supports the IHP approach. We believe the program works well when all parties involved work in concert and advance the goals of the program.

I thank the Subcommittee for their attention and am prepared to answer your questions.